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	*	**COURT OF APPEALS**
v.	*	**OF MARYLAND**
	*	**Petition Docket No. 200 September Term, 2005**
STATE OF MARYLAND	*	**(No. 2118, Sept. Term, 2003 Court of Special Appeals)**

[ENTERED: August 12, 2005]

ORDER

Upon consideration of the petition for a writ of certiorari to the Court of Special Appeals and the answer filed thereto, in the above entitled case, it is

ORDERED, by the Court of Appeals of Maryland, that the petition be, and it is hereby, denied as there has been no showing that review by certiorari is desirable and in the public interest.

/s/ Robert M. Bell
Chief Judge

DATE: August 12, 2005

UNREPORTED

IN THE COURT OF SPECIAL APPEALS

OF MARYLAND

No. 2118

September Term, 2003

RUSSELL LYNE RAMSEUR

v.

STATE OF MARYLAND

Adkins,
Sharer,
Moylan, Charles E., Jr.
(Retired, Specially Assigned)

JJ.

Opinion by Sharer, J.

Filed:

JUNE 13, 2005

[ENTERED: June 13, 2005]

Russell Lyne Ramseur, appellant, was convicted in the Circuit Court for Prince George's County for possession of cocaine with the intent to distribute.[1] After the circuit court denied his motion to suppress evidence seized at the time of his arrest, appellant stipulated to proceed on a "not guilty, agreed statement of facts" in order to preserve the suppression issue for appellate review.

Appellant filed a motion to suppress physical evidence (i.e., cocaine and paraphernalia), arguing that it was discovered pursuant to an unlawful arrest and search. The denial of his motion is the subject matter of this appeal.

Appellant presents for our review two questions, which, as distilled and recast for clarity, are:

I. Whether the suppression court erred by denying appellant's motion to suppress.

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[1] Appellant received a sentence of 20 years, all of which was suspended but 12 years.

II. Whether the police lacked reasonable suspicion to justify an investigatory stop of the vehicle that appellant was driving.[2]

We answer "No" to both questions and shall affirm.

FACTUAL BACKGROUND

On October 25, 2002, at 10:47 p.m., Sergeant Charles Magee was on duty in his marked patrol vehicle at the intersection of Silver Hill Road and Route 4 in Prince George's County. As he was waiting at a traffic light, Magee heard the sound of loud music approaching him from behind. A black Lincoln

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[2] As presented in his brief, appellant's questions are:

I. DID THE TRIAL COURT ERR IN FINDING THAT A SEARCH OF DEFENDANT INCIDENT TO ARREST WAS LAWFUL WHERE THE BASIS FOR THE ARREST WAS AN OUTSTANDING ARREST WARRANT, BUT THE STATE FAILED TO INTRODUCE THE WARRANT, OR OTHERWISE ESTABLISH PROBABLE CAUSE FOR THE ARREST[?]

II. DID THE TRIAL COURT ERR IN FINDING THAT A SEARCH OF DEFENDANT INCIDENT TO ARREST WAS LAWFUL WHERE THE DEFENDANT PRESENTED EVIDENCE THAT AN ARREST WARRANT HAD BEEN MISTAKENLY ISSUED AT THE REQUEST OF THE DEPARTMENT OF PAROLE AND PROBATION[?]

III. WAS THERE REASONABLE SUSPICION TO PERFORM A TRAFFIC STOP ON THE DEFENDANT WHERE A POLICE COMPUTER CHECK INDICATED THAT AN ARREST WARRANT WAS OUTSTANDING FOR THE REGISTERED OWNER OF THE VEHICLE[?]

Continental passed Magee to the left and stopped at the traffic light.

Magee testified that he was able to hear what he described as "vulgar language" coming from the Lincoln. That language "piqued" his interest in the car and its driver. Although it was not daylight, and the Lincoln's windows were tinted, Magee could observe "a larger built black male" in the driver's seat. Magee checked the registration plate number through his dispatch/communication system[3] and learned that there existed a open retake warrant in the name of the person who was the registered owner of the Lincoln.[4] More precisely, the dispatcher "confirmed that there was still an active warrant pending for that individual for the violation of probation." The dispatcher also provided a general description of the subject of the warrant as a "Black male, approximately five eleven, I believe it was like 190 pounds." The warrant on the computer did not include a photograph of appellant.

After he notified the dispatcher of his location, Magee asked her to verify the warrant, "because oftentimes they are old, so we have to verify them to make sure they're still active." The dispatcher

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[3] The system was a Datalux Mobile Data computer system that included a computer terminal in the officer's police vehicle.

[4] Magee testified that "when you check a plate, it runs registration cheek, a stolen check of the plate. It also runs a history on the driver, on the owner of, the registered owner, as well, on the driving record and any outstanding warrants they might have."

reaffirmed that the warrant was still active.[5] Armed with that information, Magee then effected a stop of the Lincoln. He approached appellant and requested appellant's driver's license and registration. Appellant complied. The name on the driver's license and the physical description matched what had been provided to Magee through his dispatcher. After back-up officers arrived, Magee informed appellant that he "was being placed under arrest for a retake order on violation of probation."

A search of the Lincoln, incident to the arrest, revealed a bag of suspected drugs and drug paraphernalia from beneath the driver's seat. Police also discovered in the back seat scales and "a pot - a pyrex, which is a semi-clear glass cooking pot - that had some burnt residue."

As a predicate to our discussion of the efficacy of the warrant and the information provided to Magee by his dispatcher, a review of appellant's recent history in the criminal justice system is helpful.

In 1996, appellant was sentenced to 15 years, ten suspended, for the crime of robbery with a handgun, by Hon. Robert J. Woods of the Circuit Court for Prince Georges County.[6] After completing a portion of the sentence, he was released to mandatory supervision

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[5] Specifically, the dispatcher "confirmed that there was still an active warrant pending for that individual for the violation of probation."

[6] The facts regarding appellant's probation are taken from appellant's own testimony at the suppression hearing.

and began a period of probation. During that period, according to his testimony at the suppression hearing, he was to report to the probation department in Prince George's County. However, he said, when he reported to the Upper Marlboro office, he was notified that his probation had been transferred to the District of Columbia.

In 1999, appellant committed a robbery in the District of Columbia, for which he served a term of two years. As a result of the District of Columbia conviction, he was cited by Judge Woods for a violation of probation stemming from the earlier armed robbery conviction. Appellant appeared in court for that VOP on March 22, 2002, and was ordered to submit to an additional year of probation in the District of Columbia. Appellant testified that, since that appearance in court, he has complied in all respects with the terms of his probation, including the reporting requirement. Appellant further testified that he never received notice that he was again in violation of his probation.

Appellant was released from incarceration in the District of Columbia on April 9, 2002. On April 8, 2002, one day prior to appellant's release, the Maryland Division of Parole and Probation filed a petition alleging that appellant had violated his probation by failing to: (1) report to his assigned probation agent as directed; and (2) work or attend school regularly as directed by his probation agent. In response to that petition, on August 29, 2002, Judge Woods signed a

warrant for appellant's arrest.[7] We address additional facts where necessary.

PROCEDURAL HISTORY

As a result of the contraband seized at the time of his arrest on October 25, 2002, appellant was charged with, inter alia, possession of both heroin and cocaine with the intent to distribute, and lesser included offenses. He filed a motion to suppress physical evidence, and on April 4, 2003, the court convened a hearing on that motion. On May 8, 2003, the court issued a written order, without explanation, denying appellant's motion. On November 18, 2003, on the agreed facts, the court convicted appellant of possession with intent to distribute cocaine.[8]

DISCUSSION

I. Whether the suppression court erred by denying appellant's motion to suppress.

Standard of Review

Our review is guided by the recent iteration by the Court of Appeals in *State v. Collins*, 367 Md. 700 (2002).

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[7] A copy of this warrant was provided to the circuit court in the State's answer to appellant's motion to suppress physical evidence.

[8] The suppression hearing and trial were conducted by different judges.

> Our review of a Circuit Court's denial of a motion to suppress evidence under the Fourth Amendment is limited, ordinarily, to information contained in the record of the suppression hearing and not the record of the trial. When there is a denial of a motion to suppress, we are further limited to considering facts in the light most favorable to the State as the prevailing party on the motion. In considering the evidence presented at the suppression hearing, we extend great deference to the fact-finding of the suppression hearing judge with respect to the weighing and determining first level facts. When conflicting evidence is presented, we accept the facts as found by the hearing judge unless it is shown that his findings are clearly erroneous. Even so, as to the ultimate conclusion as to whether an action taken was proper, we must make our own independent constitutional appraisal by reviewing the law and applying it to the facts of the case.

Collins, 367 Md. at 706-07.

The Fourth Amendment

The Fourth Amendment to the United States Constitution provides:

> The right of the people to be secure in their persons, houses, papers, and effects, against unreasonable searches and seizures, shall not be violated, and no Warrants shall issue, but upon probable cause, supported by Oath or affirmation, and particularly describing the place to be searched, and the persons or things to be seized.

U.S. Const, amend. IV. The Fourth Amendment is enforceable against the States through the Due Process Clause of the Fourteenth Amendment. *See Mapp v. Ohio*, 367 U.S. 643, 655 (1961). Article 26 of the Declaration of Rights of the Maryland Constitution is "*in pari materia*" with the Fourth Amendment, and provides:

> all warrants, without oath or affirmation, to search suspected places, or to seize any person or property are grevious and oppressive; and all general warrants to search suspected places, or to apprehend suspected persons, without naming or describing the place, or the person in special, are illegal, and ought not to be granted.

Md. Dec. of Rights, Art. 26. *See Carter v. State*, 367 Md. 447, 458 (2002).

Production of the Arrest Warrant

In order to be lawful, an arrest must be made either with a warrant or with probable cause." *Baziz v. State*, 93 Md. App. 285, 292 (1992). Within that context, the State bears the burden of proof of the lawfulness of an arrest. *Ott v. State*, 325 Md. 206, 222-23 (1992) (citing *Bouldin v. State*, 276 Md. 511, 515 (1976)); *Wiegmann v. State*, 118 Md. App. 317, 333-34 (1997).

Appellant first contends that the State failed to meet its burden of proof on the legality of his arrest, which in turn would void the subsequent vehicle search incident to that illegal arrest. Appellant's conclusion rests on his assertion of the State's failure to produce the warrant at the suppression hearing, citing *Dugffins v. State*, 7 Md. App. 486 (1969) as controlling.

Duggins was arrested by United States Secret Service agents. A search incident to the arrest disclosed paraphernalia used in counterfeiting documents issued by the Maryland Department of Motor Vehicles.[9] At trial, Duggins objected to the introduction of those seized documents. The court held a hearing out of the presence of the jury, at which the arresting agents testified that the arrest was made pursuant to a federal arrest warrant, which charged a federal forgery offense. The agents also testified that the warrant, obtained from a United States Commissioner, was in their possession at the time they arrested Duggins.

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[9] Now, the Motor Vehicle Administration.

At that hearing, Duggins demanded production of the warrant so that the court, in assessing the constitutional validity of the arrest, could consider the legality of the warrant as well. *Duggins, supra*, 7 Md. App. 487-88. The State, however, declined to produce the warrant and, instead, argued that the testimony of the federal agents sufficiently demonstrated the validity of the warrant.

This Court held that the State failed to meet its burden of proof as to the legality of Duggins's arrest. Speaking for the Court, Chief Judge Robert C. Murphy said:

> The State relied solely upon the warrant to justify the arrest, and since [defendant] challenged its legality and called for its production, we think the State was required to do more than simply make a testimonial showing that the warrant actually existed at the time of the arrest.
>
> * * *
>
> [Defendant's] attack on the legality of the federal warrant was not limited to an assertion that its recitals failed to show the existence of probable cause. Rather, his challenge was more broadly based and encompassed, albeit in general terms, an assertion that if the warrant existed at all, it quite possibly was not properly completed and was therefore legally defective. Under these circumstances, we

> think it evident that the State cannot overcome the challenge by producing only the testimony of those who procured the warrant to the effect that it did exist and that it was a lawful warrant.

Duggins, supra, 7 Md. App. 487.

We accept the broader proposition of *Duggins* - that the State bears the burden of proving the legality of an arrest and that, when called upon, the State must do more than produce the testimony of the arresting agents. It is, of course, inferential that the State must, when called upon, produce the warrant itself.

That said, however, we believe that *Duggins* is factually inapposite to the instant case, and unhelpful to appellant. We focus on the suppression proceedings and, from the vantage point of hindsight, know that a warrant charging Ramseur with violation of probation did, in fact, exist on October 22, 2002 - the day of his arrest. The issue before us is, whether, at the suppression hearing, the State was called upon to substantiate the existence of the warrant and, if so, whether the State satisfied its burden of proof.

Significant to our inquiry, the following transpired at the suppression hearing:

> THE COURT: What kind of motion is this?
>
> [APPELLANT]: A motion to suppress physical evidence, yes.

THE COURT: Is this a warrantless arrest?

[APPELLANT]: That is the issue.

* * *

[APPELLANT]: Your Honor, in this particular case, my client was driving a car when he was arrested. The allegation is that at the time of his arrest there was a violation of probation warrant outstanding for him. *It is our position that that was an invalid warrant, and there was no basis for that particular warrant.* So that is the subject matter of our motion.

(Emphasis added.)

We cannot read into the above a conclusion that appellant either demanded production of the warrant or challenged its *existence* at the suppression hearing. Rather, as we will discuss, *infra*, appellant challenged the arrest warrant only on the basis of its underlying *validity*. Because that challenge presumes the existence of the warrant, appellant's reliance on *Duggins* is misplaced.

Carter v. State, supra, is also relevant to our discussion. There, the arresting officer, when asked if he had brought the warrant to the suppression hearing, stated that he had not. From that, defense counsel argued that the State had failed to meet its burden of proving the legality of the arrest. The Court of Appeals concluded that Carter had not sufficiently challenged

the legality of the warrant, noting that his motion to suppress did not raise the issue.

It is further noteworthy that Carter, at the time of his arrest, was served with the warrant. In that regard, the Court noted:

> We can find no authority in Maryland or elsewhere that the lawfulness of an arrest can be vitiated by the State's failure to produce an arrest warrant at a suppression hearing when the defendant already has received a copy of it and has not specifically challenged the legality of the warrant.

Carter, 3 67 Md. at 465-66.

When we compare the instant case to *Carter*, we conclude that appellant did not specifically raise the warrant question in his motion to suppress, although he did challenge the legality of the warrant at the suppression hearing. At that time, the suppression court had before it evidence that Judge Woods had issued the warrant and that the arresting officer affirmed its existence. In contrast, appellant testified that he was compliant with his probation. The court was entitled to make a first level finding from that evidence and, taking into account credibility, made such a finding, favoring the State.

Lastly, we note, in our consideration of *Carter*, that the record indicates that appellant did receive a copy of the warrant at the time of his arrest on October

25, 2002. There is of record a copy of Judge Woods's warrant upon which we find the notation "CEPI - October 25, 2002."

In sum, we do not find that the State, at the suppression stage of this proceeding, was "called upon" to produce the warrant; hence, we cannot conclude that the State failed to carry its burden of proving the legality of the arrest.

Validity of the Arrest Warrant

At the core of appellant's effort to suppress is his assertion that he had not violated his probation; hence, the issuance of the warrant was without probable cause. Appellant did not deny the existence of the warrant, or Magee's objectively reasonable reliance upon it. According to appellant, the exclusionary rule demands suppression and the good faith exception is inapplicable, citing *Ott v. State*, 325 Md. 206.

In Maryland, it is fundamental that "[a]n arrest warrant that is facially valid provides legal authority to arrest and detain the person who is the subject of the warrant." *Dett v. State*, 161 Md. App, 429, 443 (2005). In that sense, an arrest warrant enjoys a presumption of validity. *See Wilson v. State*, 132 Md. App. 510, 529 (2000); *see also Villeda v. Prince George's County, MD*, 219 F. Supp. 2d 696 ("It is presumed that a probable cause determination by a neutral and detached magistrate . . . renders a pretrial seizure reasonable.").

Additionally:

> Ordinarily, a law enforcement officer who detains a person based on an arrest warrant that is valid on its face does so with legal authority, even though the warrant was improperly issued by the court.

Dett, supra. Said another way, "[a]n arrest made under a warrant which appears on its fact to be legal is legally justified . . . even if, unbeknownst to the arresting police officer, the warrant is in fact improper." *Ford v. Baltimore City Sheriff's Office*, 149 Md. App. 107 (2002).

Appellant has not rebutted the presumption of validity which is attached to the arrest warrant.

After viewing the suppression record in the light most favorable to the State, we conclude that the court appropriately denied appellant's motion to suppress physical evidence seized in the search following his arrest.[10]

II. Whether the police lacked reasonable suspicion of criminal conduct to justify an investigatory stop of the vehicle that appellant was driving.

Finally, appellant contends that Sergeant Magee lacked reasonable suspicion to make the investigatory

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[10] Because we have determined that the arrest warrant was presumptively valid, we need not reach a discussion of the good faith exception to the exclusionary rule.

stop of his vehicle, even though he had determined the existence of the outstanding warrant. Specifically, it is appellant's assertion that Magee did not have reason to believe that the driver of the Lincoln was also the registered owner.

We review the factual scenario surrounding the stop. While stopped at the traffic light, Magee took it upon himself to check the registration plate of the vehicle that appellant was driving. That check revealed that appellant was the registered owner of the vehicle. Magee also learned that the registered owner of the vehicle had an outstanding warrant for violation of probation. Only after verifying the active status of the warrant, did Magee effect an investigatory stop of the vehicle and determine that appellant was the same person named in the warrant.

Based on the warrant, which we have determined to have been facially valid, Magee had not only reasonable suspicion to effect the stop, but also probable cause. It is a well established principle of our judicial system that "reasonable suspicion is a less demanding standard than probable cause." *Illinois v. Wardlow*, 528 U.S. 119, 123 (2000); Nathan v. State, 370 Md. 648, 663 (2002).

JUDGMENT OF THE CIRCUIT COURT FOR PRINCE GEORGE'S COUNTY AFFIRMED;
COSTS ASSESSED TO APPELLANT.

IN THE CIRCUIT COURT FOR
PRINCE GEORGE'S COUNTY, MARYLAND

STATE OF MARYLAND	*	
	*	
vs	*	**CT021597X**
	*	
RUSSELL LYNE RAMSEUR	*	
	*	
Defendant	*	

[ENTERED: May 22, 2003]

ORDER

On April 4, 2003, this matter came before the Court for a hearing on Defendant's Motion to Suppress Physical Evidence. Having heard and considered arguments of counsel, it is this 22 day of May, 2003, by the Circuit Court for Prince George's County, Maryland,

ORDERED, that Defendant's Motion to Suppress Physical Evidence be and hereby is DENIED.

/s/
E. ALLEN SHEPHERD, JUDGE

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/s/
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